



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303

Troy, New York 12180-2299

Barbara A. DeBuono, M.D., M.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

July 22, 1997

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

David W. Smith, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Michele Tong, Esq.
NYS Department of Health
5 Penn Plaza - Sixth Floor
New York, New York 10001

Theodore McKenzie, R.P.A.
38 Waterford Drive
Wheatley Heights, New York 11798

RE: In the Matter of Theodore McKenzie, R.P.A.

Dear Parties:

Enclosed please find the Determination and Order (No. 97-174) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine if said license has been revoked, annulled, suspended or surrendered, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), and §230-c subdivisions 1 through 5, (McKinney Supp. 1992), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties **other than suspension or revocation** until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by **certified mail**, upon the Administrative Review Board **and** the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's
Determination and Order.

Sincerely,

A handwritten signature in black ink that reads "Tyrone T. Butler nm". The signature is written in a cursive style with a large initial 'T' and a trailing 'nm'.

Tyrone T. Butler, Director
Bureau of Adjudication

TTB:nm
Enclosure

**STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT**

COPY

**IN THE MATTER
OF**

THEODORE McKENZIE, R.P.A.

DETERMINATION

AND

ORDER

BPMC-97-174

A Notice of Hearing and Statement of Charges, both dated May 5, 1997, were served upon the Respondent, **THEODORE McKENZIE, R.P.A. MICHAEL R. GOLDING , M.D.**, (Chair), **PASQUALE A. CARONE., M.D.** and **VICTOR B. MARROW**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(100(e) of the Public Health Law. **CHRISTINE C. TRASKOS, ESQ.**, Administrative Law Judge, served as the Administrative Officer. A hearing was held on July 8, 1997. The Department of Health appeared by **HENRY M. GREENBERG, GENERAL COUNSEL**, by **DAVID W. SMITH, ESQ**, Associate Counsel and **MICHELE TONG, ESQ.** of Counsel. The Respondent did not appear and was not represented by counsel. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law Section 6530 (9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law Section 6530 (9)(a)(ii). A copy of the Notice of Referral Proceeding and Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Respondent was authorized to practice as a physician assistant in New York State by issuance of certificate number 000116 by the New York State Education Department. (Pet. Ex. # 2)

2. On or about November 26, 1996, in the United States District Court for the Southern District of New York, Respondent pleaded guilty to conspiracy to commit mail fraud as part of a scheme to defraud Medicaid in violation of 18 USC §371. (Pet. Ex.3, pp.13-15)

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a unanimous vote of the Hearing Committee unless noted otherwise.

The Hearing Committee unanimously concluded that the Department has sustained its burden of proof. The preponderance of the evidence demonstrates that Respondent pleaded guilty to conspiracy to commit mail fraud as part of a scheme to defraud Medicaid. Section 6530(9)(a)(ii) defines professional misconduct as having being convicted of committing an act constituting a crime under federal law. As a result, the Hearing Committee voted to sustain the Specification of professional misconduct contained within the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined, that Respondent's license to practice as a physician assistant in New York State should be revoked. This determination was reached upon due consideration of the full spectrum for penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

The Respondent did not appear at the hearing and no mitigation was offered on his behalf. The Hearing Committee finds that Respondent was convicted of conspiracy to commit mail fraud as part of a scheme to defraud Medicaid by billing for nonexistent or unnecessary medical tests. The Hearing Committee further finds that conviction of a federal crime is tantamount to professional medical conduct. The Hearing Committee believes that Medicaid fraud takes valuable money out of the health care system and cannot be tolerated. Therefore, under the circumstances, the Hearing Committee concludes that revocation is the appropriate sanction in this instance.

IN THE MATTER
OF
THEODORE McKENZIE, R.P.A.

STATEMENT
OF
CHARGES

THEODORE McKENZIE, R.P.A., Respondent, was authorized to practice as a physician's assistant in New York State by issuance of certificate number 000116 by the New York State Education Department.

FACTUAL ALLEGATIONS

- A. On November 26, 1966, in United States District Court for the Southern District of New York, Respondent pleaded guilty to conspiracy to commit mail fraud as part of a scheme to defraud Medicaid in violation of 18 USC §371.

CRIMINAL CONVICTION

Respondent is charged with committing professional misconduct as defined in N.Y. Educ. Law §6530(9)(a)(ii)(McKinney Supp. 1997) by having been convicted of committing an act constituting a crime under federal law as alleged in the facts of the following:

1. Paragraph A.

DATED:

Mez
April 5, 1997
New York, New York


ROY NEMERSON
Deputy Counsel
Bureau of Professional
Medical Conduct